

## **FACT SHEET ON GUIDELINES ON HARASSMENT BASED ON RACE, SEX, CREED, RELIGION, NATIONAL ORIGIN, AGE, COLOR OR HANDICAPPING CONDITION**

Workplace harassment is prohibited on any and all of the bases covered by the laws the Equal Employment Opportunity Commission (EEOC) and the State Personnel Commission enforces.

Since Title VII passed in 1964, it has been illegal to subject employees to different hostile working conditions because of their race, sex, national origin, age or disability. This is because Title VII prohibits employers from discriminating against any individual with respect to his terms, conditions or privileges of employment. With the passing of Senate Bill 78, the state of North Carolina has further expanded the protected factors to include creed.

Not all offensive conduct violates the law. Harassing conduct rises to the level of unlawful discrimination only when a reasonable person would regard it as hostile or abusive.

It is one thing to express one's own beliefs; another to disparage the religion or beliefs of others. In a diverse workforce, this is a critical distinction and is the heart of non-discrimination law.

The EEOC nor the SPC have never taken the position that Title VII or Senate Bill 78 prohibit the statement of one's own beliefs in the workplace. To the contrary the EEOC and the SPC have repeatedly ruled that employers must permit employees to wear yarmulkes and other religious garb to work unless doing otherwise would cause safety problems or other undue hardships.

A court ruled in the case of *Weiss v. United States*, 595 F. Supp 1050, 1056 (E.D. Va. 1984) that "when an employee is repeatedly subjected to demeaning and offensive religious slurs before his fellows by a co-worker and by his supervisor, such activity necessarily has the effect of altering the conditions of his employment within the meaning of Title VII" and now Senate Bill 78.

The State of North Carolina, as an employer, has a duty to maintain a working environment free of harassment based on race, sex, creed, religion, national origin, age, color or handicapping condition as defined by General Statute (GS) 168 A-3, and the duty requires positive action where necessary to eliminate such practices and remedy their effects.

Sexual Harassment is a part of Senate Bill 78. Many Federal agencies continue to address this issue in separate guidelines under the belief that it raises issues about human interaction that are to some extent unique in comparison to other harassment and thus may warrant special emphasis. However, the State Personnel Commission has incorporated the issue of Sexual Harassment into the phenomenon of Unlawful Workplace Harassment and is capable of addressing all related concerns in their entirety in this forum.

The criteria for determining whether an action constitutes unlawful behavior are that the conduct: 1) has the purpose or effect of creating an intimidating, hostile, or offensive work environment; 2) has the

purpose or effect of unreasonably interfering with an individual's work performance; or 3) otherwise adversely affects an individual's employment opportunities.

The criteria further emphasizes the standard for determining whether the alleged harassing conduct is sufficiently severe or pervasive to alter the terms and conditions of employment and create an intimidating, hostile, or abusive work environment. The standard is whether a reasonable person in the same or similar circumstances would find the challenged conduct intimidating, hostile or abusive. In determining whether that standard has been met, consideration is to be given to the perspective of individuals of the claimant's race, sex, creed, religion, national origin, age, color or handicapping condition as defined by GS 168 A-3.

Courts do not typically find violations based on isolated or sporadic use of verbal slurs or epithets; nevertheless, they recognize that an isolated instance of such conduct -- particularly when perpetrated by a supervisor -- can corrode the entire employment relationship and create a hostile work environment.

Under Title VII, the ADEA, the ADA and the Rehabilitation Act, and the SPC's Unlawful Workplace Harassment Policy, all employees should be afforded a working environment free of discriminatory intimidation.

In determining whether the alleged conduct constitutes harassment, the EEOC and the SPC will look at the record as a whole and the totality of the circumstances, including the nature of the conduct and the context in which it occurs. Whether the particular conduct in the workplace is harassing in nature and rises to level of creating a hostile or abusive work environment depends upon the facts of each case and must be determined on a case-by-case basis.

The employer is liable where it knew or should have know of the conduct and failed to take immediate and appropriate corrective action. An employer is liable for the acts of its supervisors, regardless of whether the employer knew or should have known of the conduct, if the harassing supervisory employee is acting in an "agency capacity."

If an employer fails to establish an explicit policy against harassment, or fails to establish a reasonably accessible procedure by which victims of harassment can make their complaints known to appropriate officials, apparent authority to act as the employer's agent is established. It is the policy of the State of North Carolina that no State employee engage in conduct that falls under the definition of unlawful workplace harassment. Furthermore, all employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation. In the event that State of North Carolina employees believe they have been the victim of unlawful harassment, they must submit a written complaint to their employing agency within 30 calendar days of the alleged harassing action. The employing agency will then take appropriate and remedial action within 60 calendar days from receipt of written complaint. Finally, after the agency's 60 calendar day response period has expired, the grievant may appeal directly to the Office of Administrative Hearings and the State Personnel Commission within 30 days if not satisfied with the agency's response to the complaint.

Employers are responsible for acts of harassment in the workplace by an individual's co-workers where the employer, its agents, or supervisory employees knew or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action. The employer is liable for non-supervisory employee harassment where it was aware or should have been aware of the harassing conduct.

The employer may be responsible for the acts of non-employees with respect to environmental harassment of employees where the employer, its agents, or supervisory employees knew or should have known of the conduct and failed to take immediate and appropriate corrective action, as feasible. Important factors to consider are the extent of the employer's control over the non-employee and the employer's legal responsibility for the conduct of such non-employees.

An employer should take all steps necessary to prevent harassment from occurring, including having an explicit policy against harassment that is clearly and regularly communicated to employees, explaining sanctions for harassment, developing methods to sensitize all supervisory and non-supervisory employees to issues of harassment, and informing employees of their right to raise and how to raise the issue of harassment under Title VII, the ADEA, the ADA, the Rehabilitation Act, and the SPC's Unlawful Workplace Harassment Policy. Establishing an effective complaint procedure by which an employee can make their complaints known to appropriate officials who are in a position to act on complaints is an important preventive measure.

#### Harassment Defined:

- 1) Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, sex, creed, religion, national origin, age, color or handicapping condition as defined by GS 168 A-3, or that of his/her relatives, friends, associates, and that:
  - a) has the purpose or effect of creating an intimidating or hostile or offensive work environment;
  - b) has the purpose or effect of unreasonably interfering with an individual's work performance;or
  - c) otherwise adversely affects an individual's employment opportunities.
- 2) Conduct includes, but is not limited to the following:
  - a) epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts, that relate to race, sex, creed, religion, national origin, age, color or handicapping condition as defined by GS 168 A-3;
  - b) written or graphic material that denigrates or shows hostility or aversion toward an individual or group because of race, sex, creed, religion, national origin, age, color or handicapping condition as defined by GS 168 A-3 and that is placed on walls, bulletin boards, or elsewhere on the employer's premises or circulated in the workplace.

#### Standard for Determining Harassment

The standard for determining whether verbal or physical conduct relating to race, sex, creed, religion, national origin, age, color or handicapping condition as defined by GS 168 A-3 is sufficiently severe or

pervasive to create a hostile or abusive work environment is whether a reasonable person in the same or similar circumstances would find the conduct intimidating, hostile or abusive. The “reasonable person” standard includes consideration of the perspective of persons of the alleged victim’s race, sex, creed, religion, national origin, age, color or handicapping condition as defined by GS 168 A-3. Courts have ruled that it is not necessary to make an additional showing of psychological harm.

In determining whether the alleged conduct constitutes harassment, the EEOC or SPC will look at the record as a whole and at the totality of the circumstances, including the nature of the conduct and the context in which it occurred. The determination of legality of a particular action will be made from the facts on a case-by-case basis.